



Ref: 8ENF-L

MEMORANDUM

TO: Carol Russel

FROM: Richard L. Sisk

SUBJECT: Comments on Sunnyside Consent Decree

I have the following comments on the Sunnyside Consent Decree.

- Page 24, Paragraph 22 - This paragraph should be reworded to state that SGC will not be required to get a permit for seeps and springs. This will make this paragraph consistent with paragraph 8(c) on page 13.
- Page 25, Paragraph 25(a) - There are several problems with the financial surety. The level of financial surety is probably inadequate in the case of a catastrophic failure of the plan under the consent decree. In other words, there is no planning for contingencies.

The conditions upon which the State can draw on the surety and the purposes for which the State can use the surety funds are very restrictive. The funds can only be used if Sunnyside is bankrupt and discontinues treatment of water necessary to maintain water quality. The State should have access to the surety if Sunnyside fails to perform as required in the Consent Decree, no matter what the reason for the failure to perform. Use of the term bankrupt is ambiguous. What does become bankrupt mean? Does this mean Sunnyside has filed for bankruptcy, does it mean that Sunnyside has been adjudicated bankrupt by a court, or does it just mean Sunnyside is out of money? The State is restricted to use the surety funds only to enter and operate the treatment facility at the American Tunnel. The surety should be available to allow the State to complete any work Sunnyside is required to perform under the Consent Decree. For instance, if Sunnyside were to go bankrupt before they complete the A list projects, the surety should be available to complete these projects, if the State so chooses.